

**From:** [Bukhari, Samir](#)  
**To:** [Dierker, Carl](#); [Conway, Timothy](#); [Simons, Andrew](#); [Stein, Mark](#); [Moraff, Kenneth](#); [Murphy, Thelma \(Hamilton\)](#); [Jennings, Lynne](#); [Weitzler, Ellen](#); [Houlihan, Damien](#); [DeMeo, Sharon M.](#); [Chien, Nathan](#); [Little, Shauna](#); [Curley, Michael](#); [Kopf, Jeff](#)  
**Subject:** FW: See below re Exxon/Mobil  
**Date:** Friday, July 02, 2021 2:01:05 PM  
**Attachments:** [20-1456P-01A.pdf](#)  
**Importance:** High

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Hi Everyone,

The First Circuit has vacated Judge Wolfe's long-term stay order and remanded the case to the district court. This opens the door for discovery to proceed. In sum:

[W]e find unconvincing the district court's rationale that EPA's determination on the permit could render "most of th[e] case moot" since the Foundation has sought injunctive relief and since the new permit might cover some or all of the behavior the Foundation seeks to enjoin. Conservation Law Found., Inc., 448 F. Supp. 3d at 24. The district court also reasoned that even if the new permit did "not directly address climate change," it would "generate a fuller administrative record to which [it could] refer to discern the meaning of particular terms" in the permit. Id. at 23. That may be so, but we are not satisfied that a stay awaiting EPA's decision on ExxonMobil's permit for this reason would "materially" help the district court. We can imagine much more salient agency determinations, though we do not suggest that a stay to refer such determinations to EPA would satisfy the Blackstone factors or that it would be proper for the district court on remand to refer such determinations to the agency at this stage of the litigation. EPA's determination would much more likely aid the district court if, for example, it were to consider the meaning of the terms as used in ExxonMobil's permit whose terms are currently in effect.

**Ex. 5 - Attorney-Client**

[REDACTED]

[REDACTED]

[REDACTED]

I'll take a closer look at the opinion and set up a time to discuss next week.

Have a happy Fourth, everybody.

Samir

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**From:** Stein, Mark <[Stein.Mark@epa.gov](mailto:Stein.Mark@epa.gov)>  
**Sent:** Friday, July 2, 2021 1:10 PM  
**To:** Bukhari, Samir <[Bukhari.Samir@epa.gov](mailto:Bukhari.Samir@epa.gov)>  
**Subject:** See below re Exxon/Mobil

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**From:** Timmermann, Timothy <[Timmermann.Timothy@epa.gov](mailto:Timmermann.Timothy@epa.gov)>  
**Sent:** Friday, July 2, 2021 12:42 PM  
**To:** Dierker, Carl <[Dierker.Carl@epa.gov](mailto:Dierker.Carl@epa.gov)>; Stein, Mark <[Stein.Mark@epa.gov](mailto:Stein.Mark@epa.gov)>  
**Subject:** From Politico today--please forward as appropriate

**AND IN THE COURTS:** A federal appeals court has revived a Conservation Law Foundation lawsuit arguing that Exxon Mobil has not done enough to plan for increased flooding and extreme weather caused by climate change at its terminal in Everett, Mass., just north of Boston. A district judge last year put the suit on hold until EPA issues a new stormwater discharge permit later this year, in case the permit resolves the claims in this case. But the U.S. Court of Appeals for the 1<sup>st</sup> Circuit on Thursday [found procedural problems with that stay](#) and said even if the permit is a

partial fix, CLF's suit also alleges past discharge violations which must be adjudicated. It sent the suit back to the district court for further proceedings.

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